PLAINTIFF'S EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LATHIERIAL BOYD, Plaintiff, vs. CITY OF CHICAGO; CHICAGO POLICE OFFICER RICHARD ZULEY, Star No. 15185; CHICAGO POLICE OFFICER LAWRENCE THEZAN, Star No. 9419; CHICAGO POLICE OFFICER STEVE SCHORSCH, Star No. 8955; CHICAGO POLICE OFFICER JOHN MURRAY, Star No. 3175; CHICAGO POLICE OFFICER WAYNE JOHNSON, Star No. 4266; AND RAY KAMINSKI, as special representative of the Estate of former Chicago police officer ANDREW SOBOLEWSKI, Defendants.

Case No. 13 C 7152

The video deposition of MANU JAIN, M.D., called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before WENDY A. KILLEN, CSR Number 84-003772, a Certified Shorthand Reporter in the State of Illinois, at 77 West Wacker Drive, 31st Floor, Chicago, Illinois, on March 17, 2016, at the hour of 8:54 a.m.

cognitive ability to remember details surrounding the events of the shooting, do you see that?

A. I do.

Q. Let's start with compromised his cognitive ability.

Define cognitive ability for me.

A. It's a higher-level functioning of the brain to communicate details about events, specific feelings you might be having, sort of a higher-level functioning of the brain, I guess, is probably the simplest way to put it.

Q. Anything else you would put in that definition?

A. Ability to reason, to be logical.

Q. Anything else?

A. I think that would be a good definition.

Q. And so you mention here -- strike that.

So tell me how -- what evidence you have or what you saw in the records to support your conclusion that his compromised cognitive ability impacted his ability to remember details surrounding the events?

What did you see to show that he couldn't remember details about the events?

A. Well, there's no indication that he spoke or communicated -- he never spoke -- but that he communicated to anyone about the events of the shooting. The only indications are that he could communicate about the fact that he was hungry or thirsty, in pain, or unhappy.

I saw nothing in the chart that indicated that he remembered specific details about the shooting or communicate any sort of emotion related to what he had gone through. I saw nothing in the medical record about that.

Q. Is that something you would have expected to see in a medical record, details about the shooting?

A. He was getting ongoing evaluation by a social worker. And one of the goals of the social worker is to help somebody cope with what they're going through. So I would expect some sort of communication around that with the social worker.

Q. Would you have expected some communication around that with a nurse necessarily?

A. Potentially, depending on what kind of relationship the nurse and the patient developed. So it's possible, but not necessary, I suppose.

Q. And would you say that his sensorium was altered to a reasonable degree of medical certainty?

A. Yes.

Q. Based on the definition that you provided earlier of a reasonable degree of medical certainty?

A. Correct.

Q. And same question, would you say that his cognitive ability was compromised to a reasonable degree of medical certainty?

A. Correct.

Q. Now, if we had the benefit, say, of speaking with the social worker and he indicated that, in fact, he had discussed the shooting with Mr. Warner, would that change your opinion as to his compromised cognitive ability?

A. It depends on what the conversation was and what he communicated about it.

Q. What do you think he would need to do in order for you to think that his cognitive ability was appropriate under the circumstances?

A. Well, I mean I think it would depend on what he remembered about it and the events

have to generate enough air to have it pushed through your vocal cords. If his diaphragm is completely paralyzed, it's possible that he's not able to generate enough air to be audible.

Q. And if he could generate some air, that would be a situation where they could make audible noise because the air would be passing through the vocal cords, correct?

A. It's possible.

Q. So you're assuming that the cuff was never deflated even for short periods of time because you didn't see a notation of that in the record, correct?

A. That is correct.

Q. Did you see anything in the records indicating -- affirmatively indicating it is not advisable to deflate this patient's cuff, anything like that, to speak to that issue?

A. I think there were notations made that patient has no spontaneous ventilations, and that, in addition, there were notations of the FVS, or fully ventilator dependent. To me, that means that a judgment has been made that it's not advisable to deflate the cuff.

Q. But you never saw any express reference to deflating the cuff one way or the other?

Whether it's advisable, whether they did it, it wasn't in there at all?

A. Are you asking like did I see something specific that said we deflated the cuff and he did very poorly, we inflated it? I did not see any notation like that, if that's what you're asking.

Q. Did you see any notation at all about deflating the cuff at all anywhere?

A. I did not.

Q. Now, you just said something that I thought was interesting. You said to make sounds, you have to generate enough air to pass through the vocal cords, right?

A. Yes.

Q. And that's basically what you're saying, is it not, in Paragraph 9 of Exhibit 4?

A. Correct.

Q. He would have had -- well, I'll just read the whole thing. The second sentence of Paragraph 9 says, Even if the cuff had been deflated at this time, Mr. Warner would not have had the strength to push air through his vocal

in. Spinal cord injury patients can live for many, many years, decades even. And a patient who has had a tracheostomy in for five, ten years is much different than somebody who is just a week from their acute injury. So somebody who doesn't have an infection, which compromises your ability to generate -- you know -- your strength and your ability to have adequate ventilation, because one of the things we know is that when you have an infection, your ventilatory requirements go up. And if you're not infected, they're not as high. So your ability to ventilate is easier.

So there are other factors that impact how much air you can move through the vocal cords, but how much residual strength is probably going to be the most important factor.

Q. Did you see anything in the records indicating that Mr. Warner ever was able to verbalize words throughout his stay?

A. I didn't see anything in the record that he was audible. He was mouthing words. That was noted.

Q. Now, in Paragraph 11, you said -- looking at -- I don't know -- about halfway down, maybe

three-word phrases, anything beyond how he -- that he's hungry, he's thirsty, that he's in pain, you would not put in that high-level category?

A. I mean I don't think it's black or white. What I saw in the medical record was that he was -- it was noted that he mouthed that I'm hungry, mouthed I'm thirsty, I'm in pain. That was about the limit of what I saw in the medical record with respect to what he was able to mouth and it was understandable for the caregivers.

Q. Okay. So I guess what I'm getting at -- I'm struggling -- is I think I have a good sense -- because I think you've repeated -- you've testified rather a couple times about what is not high-level communication. Maybe I'm a little bit less clear on what is high level.

What is it that you are saying he could not do?

A. To me, what he was doing in the medical record was communicating his basic immediate needs. When I say high level, I mean to talk about things that would recall him to remember detail about events, about temporal relationship of one to the other.

to be in like the tens of thousands, right?

A. Yeah. I mean we're going back to 1989 when I started my residency, so that's a span of 27 years. So we're talking about several thousands.

Q. Okay. So going back to that first sentence, you said, It is true that a ventilator-dependent patient with an inflated cuff can learn to mouth words which nursing staff might be able to interpret.

You said nursing staff. Can anyone besides nursing staff interpret these words?

A. Yes. I should have been more inclusive. Nursing staff, social workers, physicians, other personnel can understand. It's not just the nursing staff.

Q. What about non-hospital personnel?

A. Yeah. I think family members are often very helpful to help discern what the patient is trying to say.

Q. What about friends, close friends?

A. Possible.

Q. Do you think that somebody who kind of walks in off the street, who doesn't necessarily

have a whole lot of contact with the ventilator-dependent patient, do you think they would be able to communicate and learn to communicate with a ventilator-dependent patient?

A. I think it would be difficult, unless you have some experience. I won't say that's definitely not possible, but I think it's going to be difficult for a person who is not used to that kind of communication to just be -- to understand what somebody is saying cold turkey.

Q. Now, you testified earlier that you didn't see anything in the medical records to indicate that Mr. Warner had spoken about his -- the shooting, right?

A. I saw nothing in the medical record about that, that's right.

Q. Did you read anything indicating that Mr. Warner, while he was at the hospital, talked about the shooting?

A. I didn't read anything about that.

Q. Did you read the police reports?

Didn't you read two supplemental police reports?

A. I didn't -- oh, okay. I thought you were

and to speculation of it.

THE WITNESS: Can you repeat the question?

MS. FORDYCE: Let me rephrase it because I think it was a poorly-worded question.

BY MS. FORDYCE:

Q. You did review some documentation that indicated that Mr. Warner was speaking -- or not speaking -- but was communicating at the hospital, correct?

A. I reviewed -- I reviewed the police report, yes, if that's what you're referring to.

Q. Yes.

And the police report indicated a higher level of communication than what I think you are opining Mr. Warner was capable of at that time; is that correct?

A. What I'm opining is that I saw nothing in the medical record that would lead me to believe that he was able to have that level of cognitive ability, yes.

Q. But if you were to credit the police reports as being accurate, if you gave the police reports the same level of authority that you are giving the Northwestern medical records, then you